

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

Criminal Appeal No.1560 of 2010

Between:

Lalam Ramu,
S/o Rambabu

... Appellant

And

State of A.P., repled by
Public Prosecutor

... Respondent

JUDGMENT PRONOUNCED ON 20.12.2016

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND

HON'BLE SRI JUSTICE M.S.K.JAISWAL

1. Whether Reporters of Local newspapers : No
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : Yes

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE M.S.K.JAISWAL

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> Head Note:

! Counsel for the Petitioner: Mr. T.Nagarjuna Reddy

^ Counsel for the Respondents: Public Prosecutor (AP)

? Cases Referred:

NIL



HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
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HON'BLE SRI JUSTICE M.S.K.JAISWAL

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Between:

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And:

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....Respondent

Counsel for the appellant: Mr. T.Nagarjuna Reddy

Counsel for the respondent: Public Prosecutor (AP)

The Court made the following:

JUDGMENT: (per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The sole accused in Sessions Case No.131 of 2009 on the file of the learned X Additional District and Sessions Judge, (Fast Track Court), Visakhapatnam at Anakapalle, filed this Criminal Appeal against the judgment, dated 06.10.2010, whereby he was convicted and sentenced to suffer rigorous imprisonment for life and also to pay a fine of Rs.1,000/-, in default, to suffer simple imprisonment for six months for the offence under Section-302 of the Indian Penal Code and further sentenced to suffer rigorous imprisonment for three years and also to pay a fine of Rs.500/-, in default, to suffer simple imprisonment for three months for the offence under Section-498-A of the Indian Penal Code. Both the sentences were directed to run concurrently.

The case of the prosecution, in brief, is as follows:

P.W-1-the *de facto* complainant is the father of the deceased. L.W-2-Ruthala Ramayamma is the mother and P.Ws.3 and 4, L.W-5-Lalam Kumari, L.W-6-Seeramreddi and L.W-7-Ruthala Nookamma are the relatives of the deceased. P.Ws.5 and 6 are the caste elders of the appellant and the deceased, who conducted Panchayat about the harassment of the appellant towards the deceased. P.W-8 and L.W-11-

G.Sathibabu are the mediators for examination of the scene of offence. L.W-12-Annam Nageswara Rao is the panchayatdar along with three others for the inquest held over the dead body of the deceased. P.W-10 is the Photographer who took the photographs of the scene of offence. L.W-14-Thirumalasetti Kumar is the Photographer who took the photographs of the dead body of the deceased at mortuary room, King George Hospital, Visakhapatnam. P.W-7 is the Chief Metropolitan Magistrate, Visakhapatnam who recorded the dying declaration of the deceased on 27.01.2009. P.W-9 is the Assistant Professor, King George Hospital, Visakhapatnam who conducted autopsy over the dead body of the deceased. P.Ws.11 and 12 are the Investigation Officers.

That about 12 years back, the marriage of the deceased was performed with the appellant; that they were blessed with two daughters; that the deceased, the appellant and their children were residing in one portion and the in-laws of the deceased were residing in another portion under one roof; that since two years, the appellant developed suspicion over the fidelity of the deceased and used to harass her by beating and abusing her; that due to intolerable harassment of the appellant, the deceased went to her parents house several times and

complained to her parents about the harassment of the deceased; and that P.W-1 and LW-2 convinced her and sent her back to her in-laws' house.

That about six months back, the appellant again harassed and beat the deceased; that on that day, the deceased went to her parents' house; that on the request of P.W-1, P.Ws.5 and 6 (caste elders) conducted panchayat, chastised the appellant, convinced the deceased and sent her to her matrimonial house.

That while so, on the evening of 27.01.209, the deceased went to fields for collection of the wood and returned to the house at about 6 pm; that the appellant questioned her as to where she has gone, suspected her and beat her; that the deceased went inside the house by weeping; that the appellant with an intention to kill her, went inside the house, picked up kerosene tin, poured kerosene on the person of the deceased and set fire to her with a match stick; and that the deceased came out from the house with flames.

That on noticing the same, the mother-in-law of the deceased tried to put off the flames and she has also received some burns; that meanwhile, the neighbouring people came and put off the flames by pouring water and sand; that immediately, the deceased was shifted to N.T.R. Hospital, Anakapalle for

treatment by 108-Ambulance; that from there, she was shifted to King George Hospital, Visakhapatnam; and that P.W-7 recorded the dying declaration of the deceased on 27.01.2009 at 11.40 pm

That on receipt of medical intimation, P.W-11 visited King George Hospital, Visakhapatnam, recorded the statement of the deceased and basing on her statement, he registered a case in Crime No.8 of 2009 under Section-307 IPC on 28.01.2009 at 10.00 hours and investigated into the case.

That during the course of investigation, P.W-11 visited the scene of offence, examined the same, prepared rough sketch, got photographs of the scene of offence through P.W-10, drafted observation report of the scene of offence, duly attested by the mediators-P.W-8 and L.W-11-G.Sathibabu, seized the kerosene tin with ½ litre kerosene, one match box with two match sticks and burnt cloth pieces from the scene of offence on 28.01.2009 at 10.00 hours and recorded the statements of L.Ws.1, 2, 5 to 9.

That while undergoing treatment, the deceased succumbed to the burns on 30.01.2009 at 1 pm; that on receipt of death intimation from P.W-1, P.W-11 altered the Section of law from 307 IPC to 302 IPC on 31.1.2009 and P.W-12 took up further investigation in the case.

That during the course of investigation, P.W-12 visited King George Hospital, Visakhapatnam, got photographs of the dead body of the deceased taken through L.W-14- Thirumalasetti Kumar in the mortuary room, King George Hospital, Visakhapatnam, conducted inquest over the dead body of the deceased on 31.1.2009 in between 12.30 noon to 2.30 pm in the presence of panchayatdars-P.Ws.1 to 3 and 8, L.Ws.2, 11 and 12, and sent the dead body of the deceased to P.W-9.

That then, P.W-12 visited the scene of offence, examined the same and recorded the statements of P.Ws.1 to 6 and L.Ws.2, 6 and 7 and that on 10.02.2009, he arrested the appellant and sent him for judicial custody.

That P.W-9, who conducted autopsy over the dead body of the deceased, issued Post-mortem Certificate opining that the deceased would appear to have died of shock due to infected burns.

On completion of the entire investigation, P.W-12 filed the charge sheet.

As the plea of the appellant is one of denial, he stood the trial.

The prosecution examined P.Ws.1 to 12, marked Exs.P-1 to P-15 and produced MOs.1 to 3. On behalf of the appellant, no oral evidence was let in. Ex.D-1-a portion of P.W-2's statement was marked.

On consideration of the oral and documentary evidence, the lower Court has disposed of the case in the manner as noted above.

Mr. T.Nagarjuna Reddy, learned counsel for the appellant, submitted that the deceased has come out with conflicting versions in her statements, vide Exs.P-4 and P-10 on one side and Ex.P-6 on the other side and that the version that favours the appellant needs to be considered. He has placed heavy reliance on the evidence of P.W-5-Vice President of Gorapudi Village Panchayat and submitted that as per his evidence, the deceased has committed suicide.

The learned counsel further submitted that P.Ws.1 and 2, being the father and the close relative of the deceased, respectively, are interested witnesses and that in the absence of corroboration by independent witnesses and based on Ex.P-6-the last dying declaration of the deceased, the appellant is entitled to the benefit of doubt.

Alternatively, the learned counsel submitted that as there is a time gap of three days between the time of the deceased sustaining injuries and her death and as the deceased was stated to have died due to infection on account of burn injuries, as deposed by P.W-9-doctor, the intention to cause the death of the deceased cannot be attributed to the appellant and at best, he may be liable for conviction under Section-304-Part-II of IPC.

Opposing the above submissions, the learned Public Prosecutor for the State of Andhra Pradesh submitted that though there is a variation between Exs.P-4 and P-10 on one side and Ex.P-6 on the other side, the dying declaration which sounds natural and probable needs to be preferred and that Exs.P-4 and P-10 pass this test, while Ex.P-6 is an obvious result of tutoring of the deceased. He has further argued that the evidence on record shows that the percentage of burn injuries sustained by the deceased was 90 and that the gap of three days between the time of the deceased sustaining burn injuries and her death is not too long to conclude that the appellant had no intention to cause the death of the deceased.

We have carefully considered the respective submissions of the learned counsel for the parties with reference to the record.

P.W-1 is the father of the deceased. He has deposed that the deceased and the appellant had two daughters; that till the second daughter was born, the couple were living peacefully; that thereafter, the appellant was habituated to bad vices and started to harass the deceased; and that the deceased came to his house on several occasions and reported harassment about her husband and every time she was pacified and sent back to her matrimonial home. He has further deposed that six months prior to the death of the deceased, she came to his house and again complained of the harassment by the appellant; that a panchayat was conducted in the presence of the elders, including P.Ws.5 and 6; and that on the assurance given by the appellant that he will look after the deceased properly, the latter was sent with the appellant. That on 27.01.2009 at about 6.30 pm, P.W-1 was informed that the deceased was set fire by the appellant; that when he along with his wife rushed to the house of the appellant, they have seen the body of the deceased with burn injuries on a sand heap without clothes; and that on enquiry, the deceased informed that the appellant has beaten her stating that he is not interested to see her face, poured kerosene and set her on fire with a match stick. That the deceased was taken to N.T.R. Government Hospital, Anakapalle and later, to King George Government Hospital, Visakhapatnam.

He has also referred to the disclosures made by his daughter to the people at the hospital, the details of which were not in his knowledge.

In his cross-examination, P.W-1 admitted that he did not mention in Ex.P-1-report the information furnished to him by his daughter on 27.01.2009. He has, however, added that due to his anxiety, he omitted to mention all those details. He has also admitted that he did not state before the Police that on 28.01.2009, his daughter has given all the details to the hospital people. A careful scrutiny of the cross-examination of P.W-1 reveals that nothing worth-mentioning could be elicited from him to discredit his testimony.

P.W-2, who is the cousin of P.W-1, deposed that on receiving information, they went to the house of the appellant on 27.01.2009 at about 6.30 pm and found the deceased with burn injuries and that the deceased was taken to NTR Government Hospital, Anakapalle and from there, she was taken to King George Government Hospital, Visakhapatnam. He has further deposed that in the hospital, the deceased was able to speak and she has informed that the appellant has set fire to her.

In his cross-examination, P.W-2 stated that he went to the King George Government Hospital on 28.01.2009 at 12.30 noon

and denied the suggestion that for the first time, he went to the King George Hospital, Visakhapatnam on 30.01.2009 after the death of the deceased. He admitted that he did not state before the Police that on 30.01.2009 he came to know that the deceased died due to burn injuries.

P.W-3 deposed that the deceased is his sister-in-law. He also spoke about the harassment of the deceased by the appellant; that on coming to know about the appellant setting fire to the deceased and her admission in the hospital with burn injuries, his visiting the King George Government Hospital on 30.01.2009 and the deceased informing him that the appellant has poured kerosene and set her on fire.

P.W-4-the brother of the deceased also deposed on similar lines to that of P.Ws.1 to 3 stating that on receipt of telephonic information from P.W-1, he went to the King George Hospital, Visakhapatnam on 28.01.2009 and that on enquiry, the deceased disclosed that the appellant poured kerosene on her and set fire to her.

Except certain minor variations, the evidence of P.Ws.1 to 4 is consistent regarding the harassment meted out by the appellant to the deceased and the latter suffering burn injuries

and informing these witnesses that the burns were caused by the appellant.

We shall now refer to the dying declarations of the deceased. Ex.P-4 is the earliest dying declaration recorded by P.W-7-Magistrate at 11.40 pm on 27.01.2009. After putting preliminary questions, from which P.W-7 was satisfied that the deceased was in a fit condition to give proper answers, he has recorded the statement of the deceased. The statement of the deceased truly translated runs as under:

"Today at 6 pm., my husband has beaten me, poured kerosene and lit fire. He has beaten me on the ground that I went to Rambilli. Quarrels have been taking place between me and my husband for the last 15 days. This incident has taken place at my home. My husband has poured water and put off the fire. My husband is responsible for the burn injuries suffered by me. My father-in-law and mother-in-law always used to scold me. My in-laws, myself and my husband have been residing in the same house. My husband has poured kerosene on me. My mother-in-law was present. She did not object to the same. My mother-in-law went out of the house. My father-in-law was not present at home at that time. He came later. My marriage with my husband took place 12 years back."

To a question put by P.W-7, the deceased answered that she was taken to the hospital in an ambulance by the appellant on 28.01.2009.

P.W-11-Head Constable has recorded another statement of the deceased which was marked as Ex.P-10. A perusal of this statement shows that it is more elaborate than Ex.P-4. However, the basic version mentioned in Ex.P-4 is reiterated by the deceased as to the cause of the burns suffered by her.

We, however, notice a completely different version reflected in Ex.P-6 which is again recorded by P.W-7 on 30.01;2009. The endorsement of the doctor on Ex.P-6 shows that the same was recorded by P.W-7 at the request of the deceased. The deceased stated in Ex.P-6 that at 6 pm, she has poured kerosene and lit fire to herself as she was disgusted because the children were not heeding to her. When P.W-7 has questioned the deceased as to why she has come out with a different version from the one she has given out two days back, she has replied that previously she made the statement against her husband and mother-in-law as she was unable to bear the burn injuries; that her previous statement was false; and that the present statement is correct. She has further stated that neither her husband nor her mother-in-law is responsible for the burn injuries suffered by her.

A careful scrutiny of Ex.P-6 would leave us in no doubt that there is a complete volte face in the version of the deceased.

Interestingly, the theory of self-immolation has not been put forward by the defence either in the cross-examination of the prosecution witnesses or at least in the statement of the appellant in his Section-313 Cr.P.C. examination.

In an answer to question No.28 as to whether he has anything to say about the case, the appellant has replied as follows:

"Nothing. I have two daughters. I am not able to visualize what will happen to them and also myself."

If the deceased committed suicide, it would have been natural for the appellant to take the said stand at least in his Section-313 Cr.P.C. examination, if not earlier. No suggestion was put to any of the prosecution witnesses that the version of the deceased in Exs.P-4 and P-10 was a result of tutoring. Moreover, the statement contained in Ex.P-4 is not only crisp but also reflects truthfulness. Indeed, if the appellant, who is no other than the husband of the deceased, was not responsible for the burn injuries, there is no reason for the deceased to falsely implicate her husband. Even if she had such reason, she would not have failed to implicate her in-laws also. She has only attributed indifference to her mother-in-law when the appellant was pouring kerosene and lighting fire on her. As

regards her father-in-law, the deceased has categorically stated that he was not at home at that time.

We find that Ex.P-4 reflects true version of the deceased and the same version was further reiterated in Ex.P-10. Ex.P-6, wherein the deceased has taken a complete 'U' turn, is evidently a result of tutoring as the deceased, being in contemplation of death, must have been made to realize that conviction of her husband may be detrimental to the interests of her two daughters. The version reflected in Exs.P-4 and P-10 stands corroborated by the evidence of P.Ws.1 to 4. Therefore, we do not find any merit in the submission of the learned counsel for the appellant that Ex.P-6 may be preferred to Exs.P-4 and P-10.

Learned counsel for the appellant has placed reliance on a Division Bench judgment, dated 22.2.2016, of this Court in Crl.A.No.828 of 2010. A perusal of this judgment would show that there is no parity between the facts of said case and the instant case. In that case, the burn injuries were 35% and the victim survived for 5 days and that apart, the accused was in an inebriated condition under the influence of alcohol when the act was committed. This Court has also found, on the facts of the said case, that a serious quarrel preceded the incident and that in a fit of rage, the accused must have set fire to the deceased.

The said judgment, therefore, would not come to the aid of the appellant.

With regard to the alternative submission of the learned counsel for the appellant that the appellant may be liable to be convicted for the offence under Section-304-Part-II of the Indian Penal Code, after giving our earnest consideration, we are unable to accept this submission. Ex.P-8-Post-mortem report shows that the deceased suffered about 92% burn injuries. MO-1-plastic tin used by the appellant is big in size. These facts would reveal that the appellant had not only knowledge but also the intention to cause the death of the deceased. It is not unusual that a person with 92% burn injuries would survive for three days. The burn injuries invariably lead to infection, which ultimately leads to death. P.W-9 deposed that all the injuries are infected and the deceased appeared to have died of infected burns. Merely because the deceased did not meet with instantaneous death, it will not lead to the inference that the burn injuries caused by the appellant are not serious enough to cause the death of the deceased in ordinary course or that, he had no intention of causing the death of the deceased.

Therefore, we do not find any mitigating circumstance to convict the appellant for a lesser offence than the offence under

Section-302 IPC. We have no doubt in our mind that the appellant had the intention of causing the death of the deceased and he was rightly convicted by the lower Court for the offence under Section-302 IPC and sentenced *inter alia* to undergo rigorous imprisonment for life. We have, therefore, no reason to interfere with the judgment of the lower Court.

For the afore-mentioned reasons, the Criminal Appeal fails and the same is, accordingly, dismissed.



JUSTICE C.V.NAGARJUNA REDDY

JUSTICE M.S.K.JAISWAL

20th December 2016

Note:

LR copies to be marked.

B/o

DR